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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-260

CHARLEY JULIUS ANDREWS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on July 6, 1973.

OPINIONS BELOW

The Opinion of the Court of Appeals, issued on June 14, 1973 is in Appendix A.

The Opinion of the Court of Appeals on Petition for Rehearing issued on July 6, 1973 is in Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254(1).

QUESTIONS PRESENTED

Whether the Court erred in not charging the jury on the issue of entrapment after indicating his intention to do so and based upon said intention the attorneys for the Defendant so conducted the course of their trial.

STATEMENT OF THE CASE

Defendant contends that because during the course of the trial the Court had indicated that he would charge on the issue of entrapment (Tr. 281), and therefore counsel conducted their defense based upon such facts (Tr. 289) that it was error for the Court not to charge the jury on the issue of entrapment. Counsel for defense based upon the Court's prior decision refused to ask questions that the Defendant wished to be asked (Tr. 289, 319). Based upon the Court's prior announcements the defense gave up defenses along other lines (Tr. 319, 320, R. 16). This Honorable Court cannot ignore the cumulative prejudicial effect of the refusal by the trial Court, at this state of the proceeding, to charge on the issue of entrapment, upon the conduct of the defense at trial, *Fahy v. State of Connecticut,* 375 U.S. 85, 84 S.Ct. 229. Thus it was prejudicial error for the Court to refuse to charge on the issue of entrapment after it had led counsel for the defense to believe that he would so charge the jury and as a consequence of which the defendant's attorneys conducted their defense based upon such statements by the Court. This error is so fundamental and so prejudicial as to require a new trial.

CONCLUSION

For the reasons given above, a Writ of Certiorari should be granted.

Respectfully submitted,

CHARLEY JULIUS ANDREWS, JR.,
Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was this 5th day of August, 1973 mailed to the Solicitor General of the United States and to the United States Attorney for the Western District of Louisiana.

EDUARDO ROBERTO RODRIGUEZ

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 73-1038

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHARLEY JULIUS ANDREWS, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

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(June 14, 1973)

Before BROWN, Chief Judge, COLEMAN and DYER, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

1. See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 73-1038

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHARLEY JULIUS ANDREWS, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

ON PETITION FOR REHEARING

(July 6, 1973)

Before BROWN, Chief Judge, COLEMAN and DYER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.